



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201250029**  
Release Date: 12/14/2012

Date: September 19, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.32-00; 501.33-00; 501.36-00

Dear               :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter

cc:



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: July 30, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND**

B =  
C =  
D =  
F =  
G =  
H =  
J =

UIL: 501.32-00  
501.33-00  
501.36-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**Primary Issues**

- Does the factual record in the administrative file show that you fail to meet the operational test under section 501(c)(3) of the Code? Yes, for the reasons stated below.
- Did you fail to meet the requirements under section 501(q) of the Code? Yes, for the reasons described below.
- Did you fail to submit additional information of the Internal Revenue Service upon request, and does your lack of response constitute another basis for

Letter 4036 (CG) (11-2005)  
Catalog Number 47630W

denying your application under section 501(c)(3) of the Code? Yes, for the reasons stated below.

**Alternative Issue**

Should, upon appeal, the Office of Appeals subsequently revoke this letter, what should your effective date of exemption be? Date J, for the reasons described below.

**Facts**

You are a corporation, organized in the state of B. Your Articles of Incorporation, which were filed on C, indicate you will "... educate and assist low to moderate income individuals in buying a home through education and down payment assistance."

Initially, your activities consisted of a down payment assistance program. You used a bank to facilitate this program. One of your board members was an employee of the bank. You completed three seller-funded down payment assistance transactions. You later removed this activity and indicated that any future down payment assistance would be through governmental programs only.

You are seeking exemption effective the date you discontinued your seller funded down payment assistance program.

You changed your focus to preventing foreclosure and assisting those facing foreclosure. To this end, you provide individual counseling in the areas of personal finance, budgeting and home affordability concepts along with loan modification assistance.

You indicate that 60% of your program will focus on foreclosure prevention counseling and advising, 20% will focus on affordable and low-income housing qualification education and the rest of your time and resources will be spent working with county organizations that are involved with neighborhood stabilization initiatives and providing other broad counseling assistance. Your programs are open to anyone, regardless of their income level.

Of your 22 customers served thus far, 13 have been provided assistance in applying for housing assistance programs (including affordable housing counseling, information on the first time homebuyer credit and government program counseling) and nine have been provided foreclosure prevention or mortgage modification assistance (including short sale counseling, loan modification, foreclosure avoidance, and mortgage

affordability counseling). Your process for providing assistance to your customers is as follows:

- a. A phone interview is set up with the customer to evaluate their situation, collect information and assess the possibilities for modification or assistance programs. During this time, you discuss any applicable fees and you determine the customer's ability to pay.
- b. A face-to-face meeting is the next step. During this meeting, you review the documentation and clarify what is required by the lender or assistance program in the form of documentation, forms and the submission process. You verify that the requirements are completed and applications are filled out accurately.
- c. At this point, you determine how much ongoing involvement the customer wants from you. For example, you determine if they want you to represent them as an agent to the bank or just assist from the sidelines. You also establish timelines for follow-up meetings and contacts with the lender.
- d. Finally, you establish contact with the program and/or lender's risk mitigation/home retention department and submit the resulting package to them.

Once the customer has completed this process, they are not required to participate in any further counseling or educational programs. However, you state that you do follow-up with them. You provided no details regarding your follow-up care.

Of the nine customers that were provided foreclosure prevention or mortgage modification assistance, at least two were provided what you refer to as "loan modification." However, you never provided any details on exactly what this entails.

You have not provided any details on how you counsel or educate your customers. Instead, you indicated that you have had success in counseling individuals but never explained any further.

Although you indicate your program is educational in nature, you did not provide any educational materials except a workbook. It is unclear how this workbook is used or when or where it is implemented. You did not provide any schedules of past or present workshops or educational sessions. Instead, you indicated that there have not been and you do not intend to schedule any regular workshops, classes or seminars.

You have not applied for Department of Housing and Urban Development ("HUD") certification as an approved housing counseling agency because you have not operated as a recognized exempt organization for the required two years.

You state that you intend to collaborate with government and local agencies in neighborhood stabilization initiatives. However, you provided no details or plans on how this will be accomplished.

For your financial counseling, you originally indicated you would charge between \$50 and \$75 per visit but would allow for fee reductions or waivers. For your mortgage mitigation service, which would include creating loan packages to submit to the lending institutions, you indicated you would charge less than \$500 per transaction. You also indicated grants would supplement any amount of reduction in the fee structure or amount the customer could not pay for either offering. You provided no information on income levels or other criteria you will use to determine what fees a customer will pay. You later changed both of your fee structures and eventually stated that no fees will be charged if grants can be secured.

You have not collected any fees to date. However, your budgets show fees for services comprise more than 80% of your proposed revenue. Although you claim no fees will be charged, you never provided any updated financial data or an alternate funding proposal.

Your original governing body consisted of D, who acts as the Chief Executive Officer, E, G and H.

E is employed with the bank that was involved in your down payment assistance. Due to the potential conflict of interest, E voluntarily resigned from your governing body.

G owns a for-profit title agency, which was listed on one of your early flyers as being the company that would provide escrow services. G also resigned from the governing body but remains a "trusted advisor".

All original board members except D were replaced with four new board members..

D buys and rents real estate outside of his involvement with you.

D has consistently referred to you as "his company". D is your founder and has been your only contact and signor of documents. Presently, D is the only person providing your services. Further, D is the only governing body member who has any expertise in credit counseling. He intends to complete the courses in order to become a HUD certified counselor. D also states that he "... has various groups and agencies wanting to work with me (him)".

Although currently you do not compensate anyone, D will be compensated more than \$80,000 annually. D was present at the Board meeting where his compensation was

determined. D is currently your only employee. You intend to hire other compensated positions at some point in the future.

### Law

Section 501(c)(3) of the Code provides, in part, for exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("Regulations") states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the Regulations defines the words "private shareholders or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization must serve a public rather than a private interest and, specifically, that it is not organized and operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations states in general that the term "educational" refers to the instruction or training of an individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 501(q) of the Code provides special rules for credit counseling organizations.

(1) In general. An organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless such organization is described in paragraph (3) or (4) of subsection (c) and such organization is organized and operated in accordance with the following requirements:

(A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which--

- (i) requires that any fees charged to a consumer for services are reasonable,
- (ii) allows for the waiver of fees if the consumer is unable to pay, and
- (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body--

- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
- (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities



- (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
- (iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).
- (F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Section 4.03 of Rev. Proc. 2012-9, 2012-2 I.R.B. 261, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

Revenue Ruling 61-170, 1961-2 C.B. 112, held that a nurses' association which maintained an employment registry primarily for the employment of its members was not entitled to exemption as a charitable organization under section 501(c)(3) of the Code.

Revenue Ruling 69-441, 1969-2 CB 115, a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems is exempt under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test

under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

Consumer Credit Counseling Service of Alabama was an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan ("DMP"). Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the DMP. This fee was waived in instances when payment of the fee would cause a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and other educational pursuits rather than those connected with the DMPs. As such, the community and educational programs were the agencies' primary activities. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See *also*, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed above.

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the Tax Court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities .... Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not described in section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling DMPs. The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials to provide to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs. Its purposes were not to inform consumers about understanding the cause of, and devising personal solutions to, consumers' financial problems, or to consider the particular knowledge of individual callers about managing their personal finances. The Tax Court also held that the organization's purposes were not charitable because its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner.'

In Ohio Disability Association v. Commissioner, T.C. Memo. 2009-261 held that the taxpayer's responses to Service requests for additional information failed to supplement the initial application or clarify its purposes and activities and that the generalizations did not provide sufficient detail to determine that it would be operated exclusively for exempt purposes. Therefore, the Service was justified in denying exempt status.

In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as

part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant."

### **Application of Law**

As specified in Regulation section 1.501(c)(3)-1(a)(1), in order to qualify for tax exemption under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for purposes described in section 501(c)(3) of the Code. You do not pass the operational test.

### **Operational test**

To satisfy the operational test under section 501(c)(3) of the Code, an organization must establish that it is operated exclusively for one or more exempt purposes. Regulation section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. As clarified in B.S.W. Group Inc. v. Commissioner under the operational test, the purpose towards which an organizations activities are directed and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization. Your activities are not directed exclusively toward one or more exempt purposes. You are not operated exclusively for educational or charitable purposes [See Sections 1.501(c)(3)-1(d)(2) and 1.501(c)(3)-1(d)(3)(i)]. Your operations have a substantial nonexempt commercial purpose and there is evidence of inurement and private benefit. In addition, your operations do not meet the requirements described in section 501(q) of the Code.

### **No Exclusively Educational Purposes**

Your activities demonstrate that you do not operate exclusively for educational purposes within the meaning of section 501(c)(3) of the Code. Your overall program does not advance education. You have provided no details on any educational program that you offer. Rather, your program is primarily aimed at helping individuals modify their loans or obtain favorable financing in purchasing a home. Your main activity involves you gathering facts from the client, ensuring that they complete paperwork accurately and preparing packages to be submitted to lending institutions. There is no educational aspect to this activity.

Similar to the organization in Solutions Plus v. Commissioner, you did not provide evidence that you help your clients develop an understanding of the cause of their financial situation or a plan to address their financial problems.

Your methodology distinguishes you from the exempt organizations in Consumer Credit

Counseling Services of Alabama, Inc. v. United States and Rev. Rul. 69-441. These exempt financial counseling organizations primarily informed the public on budgeting, buying practices, and the sound use of consumer credit. Unlike financial counseling that has been recognized as exempt, your counseling sessions are not structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. Rather, they are structured primarily to enable clients to use your services to generate loan modification documents. These activities, then, are not primarily offered to provide instruction or training to improve the individuals' skills or useful to the individual and beneficial to the community within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the Regulations.

Thus, you have not demonstrated that you are operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

#### No Exclusively Charitable Purposes

Your activities demonstrate that you do not operate exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. You stated your programs are open to anyone, regardless of income level. Helping people of all income levels does not provide relief to the poor and distressed within the meaning of Regulation section 1.501(c)(3)-1(d)(2) or serve any other purpose recognized as charitable. Accordingly, you are unlike the organization described in Rev. Rul. 69-441, which aided low-income individuals and families who had financial problems, thereby relieving the poor and distressed.

With respect to the fee based counseling and foreclosure intervention services, you are unlike the organizations in Consumer Credit Counseling Services of Alabama, Inc. v. United States and Rev. Rul. 69-441, because you originally charged fees for the services you provided, then stated you would not charge fees, then stated you would lower fees if you could receive grants to supplement the loss in fee-based revenues. As noted in Solutions Plus, Inc. v. Commissioner "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Thus, you have not demonstrated that the provision of these services exclusively furthers charitable purposes within the meaning of section 501(c)(3) of the Code.

#### Substantial Non-Exempt Purpose- Commerciality

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization does not qualify for exemption if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. You conduct activities, which are normally carried on by commercial enterprises for profit, in the same commercial manner and in direct competition with commercial businesses. Originally, you intended to provide services for a fee to your clients, then later stated you would not charge any fees if you could secure

grants. The services you provide are in direct competition with banks and other commercial firms offering similar services. You failed to establish that the fees charged to provide your services entitle your clients to any educational programs or services beyond those that are offered by commercial firms. Furthermore, you have not established that you intend to provide these services on different terms, at prices significantly below market or in any other way that deviates from normal commercial practice.

Your finance structure also demonstrates that you operate for a substantial nonexempt commercial purpose. You are unlike the exempt organization described in Consumer Credit Counseling Services of Alabama, Inc v. United States, which received support from the government and private foundation grants, contributions, and assistance from labor agencies and the United Way. Your revenues were to be originally from service fees, then you stated fees would be reduced if grants could be secured. While you indicated that you will fundraise and solicit governmental grants, you have not applied for nor received any governmental grants and there is no evidence that you have received contributions or gifts from disinterested members of the public. Your funding is similar to that of the organization involved in the B.S.W. Group, Inc. v. Commissioner decision that cited lack of solicitation of contributions and sole support from fees as factors disfavoring exemption.

The activities you identify as educational and charitable are merely incidental to your business of providing services for a fee. Thus, more than an insubstantial part of your activities are in furtherance of a nonexempt purpose, in contravention of Regulation section 1.501(c)(3)-1(c)(1). Accordingly, your activities evidence more than an insubstantial nonexempt commercial purpose.

#### Inurement

As required in section 501(c)(3) of the Code and specified in section 1.501(c)(3)-1(c)(2) of the Regulations, an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. D's control and influence over your operations indicate you have failed to establish that your net earnings will not inure to D. You have failed to establish that the projected director compensation is reasonable.

#### Private benefit

As described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, an organization is not organized and operated for exempt purposes unless it serves a public rather than a private interest. Similar to the organizations denied exemption in Ohio Disability Association v. Commissioner and Peoples Prize v. Commissioner you have not provided sufficient evidence that you serve a public rather than a private interest.

Substantial private benefit accrued to the bank whom employed one of your board members and to the title agency which was owned by another member of your board of directors.

#### Section 501(q) of the Code

Since you are providing services that are defined in section 501(q)(4)(A), you are required to comply with the provisions of 501(q). You do not meet the requirements of 501(c)(3). Even if these requirements had been met, your operations do not meet the requirements of section 501(q) of the Code.

Section 501(q)(1)(C) states that an exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to the consumer for services are reasonable and allows for a waiver of fees if the consumer is unable to pay. Your fee structure was changed throughout the determination process. However, you never provided any evidence of what the final fee structure would be or how the public would be made aware of your fee policy. Although you indicated that you would waive fees when necessary, you provided no evidence of any established fee waiver policy. Further, you provided no evidence of how the public would be made aware of any fee waiver policy and none of your promotional materials provide any information regarding any fee waiver policy. Therefore, you failed to establish that you have a fee waiver policy that complies with section 501(q)(1)(C) of the Code.

Consequently, had you established that you otherwise met the requirements of section 501(c)(3) of the Code, your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

You have not provided sufficient evidence on how you meet the standards of exemption under section 501(c)(3) of the Code. Due to your lack of an exclusively exempt purpose, the evidence of commercial operations as well as private benefit and inurement demonstrated in your operations, we conclude you do not qualify for exemption under section 501(c)(3) of the Code. Even if your activities did further an exempt purpose, and there was no record of inurement or substantial private benefit, exemption under section 501(c)(3) would be prohibited as you do not meet the requirements under section 501(q) of the Code.

#### **Applicant's Position**

You state that the main difference between you and what is provided by a financial services firm is that your programs are not designed to encourage the purchase of any financial product or service. You do not sell any financial services. You are not aware of any for-profit companies that offer services similar to yours. You state that your programs are similar to what is provided by HUD nonprofit authorized agencies.

Most of the education to this point has been limited to individuals who receive one on one counseling. You direct individuals to HUD websites, such as their "Tips for Avoiding Foreclosure." You provide basic budgeting advice and analyze the customer's financial scenario using a budgetary worksheet. You develop an action plan with the individual and determine how to implement the plan.

Although you do intend to offer classes and/or workshops in the future, you have no plan to offer these regularly unless the needs of the community and/or local government require regular sessions.

You state that your individual counseling is educational in nature and meets the requirements of exemption under section 501(c)(3) of the Code.

### **Service Response to Applicant's Position**

You failed to provide evidence of a substantial educational program. Rather, your financial counseling, resembles a regular trade or business. Your program is meant to prevent people from losing their homes by obtaining more favorable loans or obtaining favorable financing rates in purchasing a home. You do not limit your services to the poor or distressed.

You provide financial counseling for a fee (paid either by the customer or through grants). You operate with a paid staff. Although you state you developed an action plan and how to implement that plan with customers such as your foreclosure avoidance example you provided, you have not provided evidence showing that doing so furthers a charitable or educational purpose. Rather, the manner in which you operate is more closely aligned with what is offered by financial planners and other commercial enterprises which help people refinance their mortgages or plan for a home purchase. As noted in New Dynamics Foundation, you have not provided evidence that contradicts our findings [that you are not operated exclusively for an exempt purpose], such evidence should have been submitted as a part of the administrative determination process. We received no such evidence.

### **Conclusion**

We are denying your application based on the following three reasons. Each of these reasons, standing alone, is sufficient enough to deny:

1. You do not qualify for exemption under section 501(c)(3) because you do not meet the operational test under section 1.501(c)(3)-1(c)(1) of the Regulations. You are not operated exclusively for charitable and educational purposes under sections 1.501(c)(3)-1(d)(2) and 1.501(c)(3)-1(d)(3)(i) of the Regulations. You do not serve



public rather than private interests as stipulated by section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

2. You failed to meet section 501(q) of the Code. Because you provide services described in section 501(q)(4)(A), you are required to meet the provisions of section 501(q) in addition to the requirements of section 501(c)(3).

3. You have failed to submit information upon request. Consequently, you have failed to demonstrate to the satisfaction of the Service that you qualify for exemption. In accordance with section 4.03 of Rev. Proc. 2012-9, your lack of response constitutes in and of itself another basis for denying your application under section 501(c)(3) of the Code.

### **Alternate Issue**

You previously agreed to be recognized as exempt under section 501(c)(3) of the Code effective J, the date you ceased your seller funded down payment assistance program. Accordingly, under no circumstances should exemption be granted prior to date J.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the

organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure: Publication 892

cc: